

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by:)	No. 76-081
Annie M. Gutierrez)	June 7, 1977
)	

BY THE COMMISSION: We have been asked the following question by Annie M. Gutierrez:

Ms. Gutierrez and several other persons organized a reception to honor Judge Cruz Reynoso's accession to the California Court of Appeal. The group accepted monetary donations to help defray the costs of printing and mailing invitations and providing music, food and beverages at the reception, and collected approximately \$1,500. The largest donation received was \$250 from the Mexican-American Bar Association, but the vast majority of donations were between \$10 and \$25. Between 400 and 500 people attended the reception. Based on these facts, Ms. Gutierrez has asked whether Judge Reynoso will incur a reporting obligation as a result of the reception.

CONCLUSION

By attending the reception given in his honor, Judge Reynoso received a gift which was equal to the per capita cost of giving the reception. However, the gift will not be reportable because the per capita cost was less than \$25 per person.

ANALYSIS

It is clear that when Judge Reynoso attended the reception given in his honor he received a "gift" within the meaning of the Political Reform Act. The Act defines the term "gift" to mean "any payment to the extent that consideration of equal or greater value is not received." Government Code Section 82028.^{1/} Section 82044, in turn, defines "payment" to include a "rendering of money, property, services or anything else of value, whether tangible or intangible." Clearly, a person who attends a social event given in his

^{1/} All statutory references are to the Government Code unless otherwise noted.

honor receives both tangible and intangible benefits from the friends who host the event and from those who attend it.^{2/}

The more difficult issue, however, is the valuation of the benefits received. We previously have considered how a gift should be valued and reported when a number of individual donors contribute funds toward the purchase of a single gift. See Opinion requested by Assemblyman Art Torres, 2 FPFC Opinions 31 (No. 75-163, Feb. 4, 1976). We concluded in the Torres opinion that the individual donations should be aggregated and^{3/} that the entire amount should be reported as a single gift.^{3/}

However, in the Torres opinion, the donations had been used to purchase a tangible gift that was presented to and used by Assemblyman Torres. In the present case, the individual donations were used to purchase entertainment and refreshments that benefited everyone who attended the reception, as well as Judge Reynoso. Moreover, Judge Reynoso did not receive any tangible benefits in connection with the event other than the food and beverages he consumed. Under these circumstances, we think that the appropriate measure of the value of the gift to Judge Reynoso is the value of the benefits he personally received by attending the event. Furthermore, we think that the proper way to establish this value in this case is to divide the actual cost of sponsoring the event by the number of persons who attended.

We realize that this method of valuation does not yield a value for the intangible benefits received by Judge Reynoso as a result of attending the reception given in his honor. We have concluded, however, that any monetary value

^{2/} We think that the payment in question herein is properly characterized as a gift and not a contribution. See Section 82015; 2 Cal. Adm. Code Section 18215. At the time of the reception, Judge Reynoso was not a candidate within the meaning of the Political Reform Act and the "payment" received by him was not made for political purposes.

^{3/} We note that in the Torres case no individual donor contributed more than \$25 toward the purchase of the gift and, hence, we concluded that it would be permissible to disclose the donors of the gift by using an appropriate designation to describe the group as a whole.

that would be assigned to the intangible benefits received would be minimal in this case and certainly would not be sufficient, when added to the value of the tangible benefits received, to trigger the \$25 reporting threshold.^{4/}

Applying the method of valuation that we think is appropriate to the facts of the present case, therefore, the value of the gift received by Judge Reynoso would be between \$3 and \$4. Since the value of the gift is less than \$25, Judge Reynoso will not have to report its receipt on his Statement of Economic Interests. Section 87207(a).

Approved by the Commission on June 7, 1977. Concurring: Lapan, Lowenstein, McAndrews and Quinn. Commissioner Remcho concurred in the result.

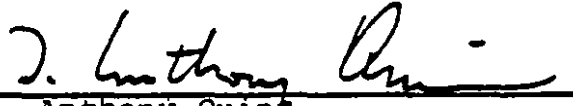

Daniel H. Lowenstein
Chairman

^{4/} This does not mean that intangible benefits of a different nature than those involved herein would not be subject to valuation. If, for example, a reception were given to honor an attorney-public official who was retiring to enter private practice and the reception offered him an opportunity to meet potential clients for his new practice, a different case would be presented and it may be that the intangible benefits received would be sufficient to trigger the \$25 reporting threshold.

Commissioner Quinn, concurring:

I concur with the result and the logic used to reach it in this opinion. However, I think the opinion would be clearer were there a more thorough discussion of the intangible benefits which might accrue to an honoree at a reception such as this. I would add the underscored language at the bottom of page three.

"We have concluded, however, that any monetary value that would be assigned to the intangible benefits received would be minimal in this case and certainly would not be sufficient, when added to the value of the tangible benefits received, to trigger the \$25 reporting threshold. It is also necessary to look at the rationale behind the gift. The facts presented here indicate no situation involving an attempt to influence or otherwise benefit Judge Reynoso."


T. Anthony Quinn
Commissioner

Commissioner Remcho, concurring:

I join in the majority's conclusion that Justice Reynoso has no reporting requirement. I cannot join the opinion, however, because I believe the majority makes a serious mistake in placing a monetary value on the "intangible" benefits of the reception.

The majority found the "appropriate measure of the value of the gift to Justice Reynoso is the value of the benefits he personally received...." 3 FPPC Opinions at 45. In calculating the tangible benefit to Justice Reynoso the majority divided the total cost of the reception (\$1,500) by the number of persons who attended (400-500 people) and determined that the tangible benefit to Justice Reynoso was \$3.00 - \$4.00. It then determined that "any monetary value that would be assigned to the intangible benefits received would be minimal and certainly would not be sufficient, when added to the value of the tangible benefits received, to

trigger the \$25.00 reporting threshold." 3 FPPC Opinions at 45-46. It apparently reserved decision on whether the intangible benefits of a reception would reach the reporting threshold where, for example, a retiring attorney might reap publicity benefits from a reception in his honor. 3 FPPC Opinions at 46 n.4.^{1/} I do not believe that any such intangible benefits must be reported.

The majority does not attempt to explain the precise "intangible benefit" Justice Reynoso received, nor does it put a precise value on those benefits, but we can infer that it is somewhere just above nothing and below \$21.00 or \$22.00.^{2/} I do not know how they arrived at that figure. If the food and fellowship were good and the Justice had no other plans for the evening, the intangible benefits would probably be on the high side. If the food were bad, if he spent most of the evening talking to someone he had been trying to avoid and if he would have preferred to see a good movie that night, the "intangible benefits" of the reception would probably be on the low side. I don't know if he had a good time or not. It's none of my business. It's also none of the Commission's business. And even if the Commission makes it its business to inquire into the intangible benefits received by a public official, it simply has no defensible way to value those benefits.

As a judge, Justice Reynoso is required by Section 87200 to report his income. Section 82030 defines "income" to include, with certain exceptions not applicable here, a "gift." A "gift" is: "... any payment to the extent that consideration of equal or greater value is not received." Section 82028.^{3/} A "payment" is:

^{1/} Footnote 4 begins with the admonition that "[t]his [the failure of the combined tangible and intangible benefits to reach the \$25.00 threshold] does not mean that intangible benefits of a different nature than those involved herein would not be subject to valuation." From the text of the opinion, I assume the majority means "subject to valuation high enough to trigger reporting."

^{2/} Since the majority concluded that combined value of tangible and intangible benefits received was less than \$25.00, I assume that the intangible benefits were valued at something over nothing but less than the \$21.00 or \$22.00 which, when added to the \$3.00 or \$4.00, would bring Justice Reynoso to the reporting threshold.

^{3/} The majority brushes aside the question whether the intangible benefits meet the definition of a gift at

... a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

Section 82044 (emphasis added).

"Tangible and intangible" are not defined.

Finally, Section 87207(a)(1) requires the reporting of the name and address of each source of gifts of \$25.00 or more in value and a general description of the business activity of the source. Section 87207(a)(4) requires reporting of the amount and the date on which the gift was received.

A person seeking guidance from the majority opinion knows that Justice Reynoso's reception did not result in an intangible benefit worth more than \$21.00 or \$22.00 to the judge. but he or she has no guidance on how the Commission reached the \$0-\$22.00 value nor on how to value his or her intangible benefits. The Commission does not know how it reached the figure either. Mr. Justice Stewart's statement that he may not be able to define hard-core pornography, "But I know it when I see it," Jacobellis v. Ohio, 378 U.S. 184, 197 (1964), did little to advance First Amendment jurisprudence. The Commission's apparent ability to know an intangible benefit of \$25.00 when it sees it will do no more for the jurisprudence of political reform. If we cannot provide precise criteria we cannot in good conscience hold persons criminally and civilly liable for failure to read/our collective instincts. To attempt to do so is folly.^{4/}

(footnote 3 continued)

all. It is indeed likely that the privilege of joining Justice Reynoso was an intangible benefit to his friends which outweighed the intangible benefits he received. "Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value." Section 82028. We have held, however, that a public official's presence at a function honoring someone else is "full and adequate consideration" for free tickets to the function. Opinion requested by Kenneth Cory, 1 FPFC Opinions 137 (No. 75-094-C, Oct. 1, 1975). It doesn't seem unreasonable to assume that people attending the benefit gain at least as much as Justice Reynoso. They are seen, they meet friends, and they enjoy the association with his name and person.

^{4/} An endorsement by the Governor, for example, may be worth tens of thousands of dollars to a local candidate. Should the candidate report it as an intangible campaign payment? If so, how should it be valued?

The Political Reform Act of 1974 is tough legislation. Its genesis in the petition process, however, denied it the maturing influence of the give and take of the legislative process. The Act bears the mark of that lack of debate and compromise. I have little doubt that the Legislature would have stricken so vague and unhelpful a term as "intangible" in the definition of "payment." That would have been a happy result. The little to be gained by disclosure of the benefits here (and those at stake in the opinion requested by Peter Stone, 3 FPFC Opinions 52) is outweighed by the uncertainty created by the provision and by the absurdity of trying to value the joy of being honored.

The Act is aimed at money -- big money one would have thought from the ballot argument.^{5/} It is limited to financial matters. It wisely ignores the complex of personal relationships, friendships, political inclinations, and a host of other factors which are part and parcel of the political process but which are incapable of valuation. I cannot believe that the voters intended that the intangible benefits of being honored at a reception be reported or that the Commission and public officials waste their time and the taxpayers' money worrying about such matters. I would therefore

5/ THE PROBLEM:

Big money unduly influences politics: big money from wealthy individuals and wealthy organizations. In politics, these powerful interests -- whatever their party -- usually have one goal: special favors from government. In California, corporations receive large tax breaks from the state. Companies contracting with local government often contribute to the campaigns of local officials. From city councils to the state legislature, oil companies, land developers, and other powerful interests sit down with our elected officials to write new laws. And the cost of state and local government continues to climb.

Who pays for this? You, the taxpayer, of course. On energy issues, tax policy, transportation programs, and every major issue, the voice of the citizen/taxpayer is seldom heard above the demands of the big moneyed interests.

Argument in Favor of Proposition 9, November, 1974 Ballot Pamphlet.

narrowly construe the word "intangible" in a manner consistent with the intent of the Act and consistent with commercial practice.

The Uniform Commercial Code §9-106 defines "general intangibles" as:


... any personal property (including things in action) other than goods, accounts, chattels, papers, documents, instruments and money.

The comments to the 1972 version of the Code elaborate upon this definition:

... "general intangibles" brings under this Article miscellaneous types of contractual rights and other personal property which are used as commercial security. Examples are goodwill, literary rights and rights to performance. Other examples are copyrights, trademarks and patents....

Goodwill, literary rights and the like are "intangibles" routinely capable of valuation in the market place. Their value is generally that which a willing buyer would pay a willing seller. The joy of being honored may not be so valued.

I would limit the definition of reportable intangibles to those for which there is a readily ascertainable commercial market value. Since Justice Reynoso's intangible benefits, if any, do not have such a readily ascertainable value, I join in the majority's conclusion that there is no reporting requirement.


Joseph Remcho
Commissioner